

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

WILLIAM MICHAEL SMITH ,

Plaintiff,

v.

CIVIL ACTION NO. 3:20-0783

WESTERN REGIONAL JAIL and
CORRECTIONAL FACILITY;
PROPERTY OFFICER.

Defendants.

MEMORANDUM OPINION AND ORDER

This action was referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendations for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommends that the Court dismiss the action. ECF No. 4.

Mr. Smith filed two objections. First, he requests that the Court appoint him counsel. The Court must deny this request because there is no right to an attorney for civil suits. Second, Smith reiterates his belief that his complaint has merit because Western Regional Jail confiscated his property and then lost it. ECF No. 5. However, the Magistrate Judge did not recommend dismissal because she found Smith's allegations to be without merit. She found that federal court (which, unlike state court, is limited in the cases it may hear) is the incorrect forum for this case. As the Magistrate Judge states on pages five and six of her findings, Smith cannot file claims in federal court before exhausting other avenues for relief. For example, Smith may file a complaint with the

West Virginia Legislative Claims Commission, which has previously awarded inmates monetary damages for property lost by the Regional Jail.¹

Accordingly, the Court accepts and incorporates herein the findings and recommendations of the Magistrate Judge (ECF No. 4); **DENIES** Plaintiff's Application to Proceed Without Prepayment of Fees and Costs (ECF No. 1); **DENIES** Plaintiffs' Motion for Appointment of Counsel (ECF No. 6); **DISMISSES** the action with prejudice; and **REMOVES** the civil action for the docket of the court.

The Court **DIRECTS** the Clerk to forward copies of this written opinion and order to all counsel of record, and any unrepresented parties.

ENTER: February 5, 2021

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', is written over a horizontal line.

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE

¹ See, e.g., *Brent M. Combs v. Regional Jail Authority* (CC-11-0048) Report of Court of Claims, available at http://www.wvlegislature.gov/joint/Court/Reports/archive/COC_Volume29.pdf (awarding \$15.45 to inmate after the Regional Jail confiscated then lost the inmate's book); *Deuley v. Regional Jail Authority* (CC-11-0242) (awarding inmate \$535.00 after Regional Jail confiscated then lost the inmate's clothing and other items).